



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

December 16, 1960

Honorable Shelby H. Blaydes
District Attorney
County of Pecos
Fort Stockton, Texas

Opinion No. WW-973

Re: Discretion of Commis-
sioners' Court in
calling bond election
under Art.4478, V.C.S.

Dear Sir:

You have requested our opinion on these questions:

"(1) Does the Commissioners Court of Pecos County, Texas, have any discretion in the matter of whether or not to call an election on the proposition as set forth in a petition for an election, a true copy of which (other than signatures) is attached hereto as Exhibit 'A' and made a part hereof, if the petition meets all the requirements as set forth in Article 4478, R.C.S.

"(2) When a County has in operation one or more county hospitals, and when the Commissioners Court of said County is presented with a petition drawn under Article 4478 calling for the purchase by said County of an additional hospital facility, and the petition as presented is in compliance with all of the provisions of Article 4478, must the Commissioners Court call an election for the purpose of purchasing the additional facility called for in such petition for hospital purposes, or does the Commissioners Court have any discretion in the matter under Article 4490, R.C.S. of whether or not to call an election on the

proposition set forth in the petition resulting in a bond election to be held by said County."

Attached to your request is a copy of a "Petition for a County Hospital Bond Election" which was duly presented to the Commissioners' Court whereby the Commissioners' Court is requested to submit the following proposition:

"SHALL the Commissioners' Court of Pecos County, Texas, be authorized to issue the bonds of said County in the total principal amount of NINETY SEVEN THOUSAND DOLLARS (\$97,000.00), to mature serially within any given number of years not to exceed TWENTY (20) years from the date thereof, and to bear interest at a rate not to exceed FIVE PER CENTUM (5%) per annum, payable annually or semi-annually; and to levy ad valorem taxes sufficient to pay the interest on said bonds and to create a sinking fund to pay the principal thereof at maturity, for the purpose of purchasing, improving, altering and repairing an existing building in the City of Fort Stockton, Texas, known as GIPSON HOSPITAL and located upon the following described realty in Pecos County, Texas, to-wit:

Lots 2 through 10, in Block 20; and the West 63' of Lot 11, in Block 20; and the North 22' of the East 75' of Lot 11, in Block 20; and the East 1/2 of Lots 1 and 3, in Block 20; and Lots 9, 10 and 11, in Block 28, all located in the OLD FORT ADDITION

to the City of Fort Stockton,
Pecos County, Texas, together
with all improvements located
thereon.

Said building and said premises to be
used as an additional hospital building
and for all necessary permanent improve-
ments in connection therewith, pursuant
to authority conferred by the Constitu-
tion and laws of the State of Texas,
particularly Section 9 of Article 8, of
the Constitution, and Chapter 1, Title
22 and Chapter 5, Title 71, Revised Civil
Statutes of 1925, as amended?"

You also state as follows:

". . . Pecos County currently owns two
hospitals of a total capacity of 50 beds.
One, a hospital of 32 beds, is located in
Fort Stockton. The other, a hospital of
18 beds, is located in Iraan. . . ."

Article 4478, V.C.S., is in part as follows:

"The Commissioners' Court of any
county shall have power to estab-
lish a county hospital and to en-
large any existing hospitals for
the care and treatment of persons
suffering from any illness, disease
or injury, subject to the provisions
of this chapter. At intervals of not
less than twelve months, ten per cent
of the qualified property tax paying
voters of a county may petition such
court to provide for the establishing
or enlarging of a county hospital, in
which event said court within the time

designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. . . ." (Emphasis added)

The underlined language of this statute clearly contemplates that the qualified property taxpaying voters of a county may petition the Commissioners' Court ". . . to provide for the establishing or enlarging of a county hospital, . . .". The proposition contained in the petition here presented to the Commissioners' Court goes beyond these purposes in that it specifically describes by metes and bounds the property to be acquired.

The statute does not authorize the petitioners to name the site or location of the proposed facility and this remains a matter to be determined by the Commissioners' Court in the exercise of its sound discretion. In answer to your first question it is our opinion that it is not mandatory that the Commissioners' Court call an election upon this petition but it may do so if it so desires, providing the petition is properly executed by the requisite number of qualified persons.

Your second question is hypothetical because the Commissioners' Court has not been presented with a petition other than that discussed above. We regret that we may not pass upon hypothetical situations. If in the future the Commissioners' Court should be presented with another petition we shall be glad to examine a copy and render an opinion.

SUMMARY

The petition presented goes beyond the purposes set out in Article 4478, V.C.S., and it is not mandatory that

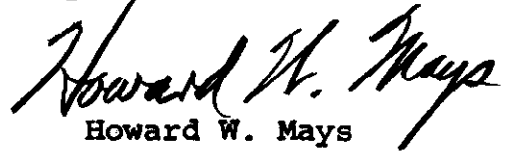
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the Commissioners' Court call an
election, although it may do so.

Very truly yours,

WILL WILSON
Attorney General of Texas

By:



Howard W. Mays
Assistant

HWM-s

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Gordon C. Cass
Tom McFarling
Martin DeStefano
Jerry H. Roberts

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore